

DOCKET FILE NO. 94-147

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

FCC 96M-35  
60926

In Matter of ) WT DOCKET NO. 94-147  
)  
JAMES A. KAY, JR. )  
)  
Licensee of one hundred sixty )  
four Part 90 licenses in the )  
Los Angeles, California area. )

O R D E R

Issued: March 13, 1996 ; Released: March 15, 1996

This is a ruling on the Wireless Telecommunications Bureau's Request For Certification that was filed on March 6, 1996. An Opposition was filed on March 12, 1996, by James A. Kay, Jr. ("Kay").<sup>1</sup>

On December 13, 1994, the Commission released its Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing for Forfeiture, FCC 94-315 ("Show Cause Order"). The Show Cause Order recited in the case caption and at Para. 1 that Kay holds 164 licenses which are the subject of this proceeding. Each of the licenses was listed by call sign in Appendix A to the Show Cause Order. The Bureau discloses that there is one license held by a partnership known as Multiple M Enterprises, Inc.: Kay Jr., James A. LP ("Multiple M"); and eleven licenses held by Marc Sobel ("Sobel").<sup>2</sup> The Bureau now seeks certification to the Commission to request that the license of Multiple M and the eleven licenses of Sobel be removed from this case because there is no evidence to establish that Kay owns or controls the twelve licenses.

There are compelling reasons to remove the Multiple M and the Sobel licenses from consideration in this case because it would be necessary to consider making them parties which would delay the proceedings.<sup>3</sup> There is now

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<sup>1</sup> The Bureau has advised that the Request For Certification was hand served. Therefore, under the Commission's rules there is a four days response time and no allowance of three days for mailing. See Rules §1.294(b) and §1.4(g), (h).

<sup>2</sup> The Multiple M license is listed in Appendix A to the Order to Show Cause as No. 153 and the Sobel licenses are listed as Nos. 154-164.

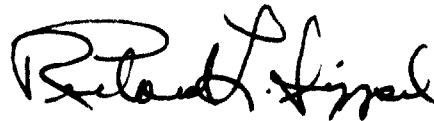
<sup>3</sup> On February 26, 1996, counsel for Sobel advised the Presiding Judge by letter that although Sobel was not yet a party to the proceeding, Sobel intended to file a response to a Bureau pleading that had raised the issue of the ownership of Sobel's licenses. Sobel's counsel advised that it would "require some time to absorb the Bureau's actions and statements and determine what response is necessary to protect his interests and preserve his rights in these very unusual circumstances." The Presiding Judge ordered Sobel to proceed under the rules to either seek party status by motion under §1.223 or

pending a Motion For Summary Decision in which the Bureau requests that all of Kay's licenses listed in Appendix A be revoked. Since there would be a material question of fact as to the ownership and control of the Multiple M and Sobel licenses,<sup>4</sup> summary relief could not be granted until the ownership interests were resolved. The Bureau is not prepared to request summary decision on the Multiple M and Sobel licenses because "the full nature and extent of the relationship that Multiple M and Sobel may have with Kay is unknown and, in the Bureau's opinion, should be explored, at least initially, in the context of a non-adjudicatory investigation." Kay argues tardiness, lack of sufficient legal authority and procedural irregularities as reasons for not making the certification. However, Kay does not assert issues of ownership or control with respect to the licenses and Kay does not deny the factual accuracy of the Bureau's Request.

It would be inappropriate to require Multiple M and Sobel to seek intervention as parties and be put to the task of showing their independence from Kay in order to avoid a possible license revocation. But removal of licenses from litigation under a Show Cause Order would involve a change or amendment to a Commission order and the Presiding Judge is without authority to grant such corrective relief. Cf. Atlantic Broadcasting Co., 5 F.C.C. 2d 717, 721 (1966) and Frank H. Yamm, 39 Radio Reg. 2d (P&F) 1657 (1977). Kay concedes that the Presiding Judge has authority to certify a matter to the Commission and there is no reason to withhold certification merely because the Bureau is seeking the relief as Kay suggests in his argument. See 47 C.F.R. §0.314(c) (questions that would be acted on by the Commission may be certified by a presiding judge on his own motion to the Commission). Therefore, immediate certification to the Commission appears to be the appropriate remedy.

Accordingly, IT IS ORDERED CERTIFIED to the Commission under 47 C.F.R. §0.341(c) the question of whether the one license held by Multiple M and the eleven licenses held by Marc Sobel that are specified in Appendix A to the Show Cause Order should be the subject of revocation in this case and/or whether the licenses should be removed from the Show Cause Order.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel  
Administrative Law Judge

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submit relevant information as a non-party under §1.225. See Order 96M-24, released March 1, 1996. The Presiding Judge is now advised by Sobel's counsel that in view of the relief that is being sought by the Bureau's Request For Certification, he would not be participating further. There has been nothing received from Multiple M.

<sup>4</sup> Kay has represented in answers to the Bureau's interrogatories that Kay is a limited partner of Multiple M; that Sobel performs various technical services for Kay; and that Kay manages stations that are licensed to Sobel.